

25 YEAR RE-REVIEW

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

DOCKET NOS. 3041 AND 3818

U.S.-EUROPE-MIDDLE EAST CARGO SERVICE CASE

In the matter of applications of Seaboard & Western Airlines, Inc., and Transocean Air Lines, Inc., under section 401 of the Civil Aeronautics Act of 1938, as amended, and such other sections as may be applicable for a certificate of public convenience and necessity authorizing the transportation of property in air transportation between areas and/or points in the continental United States and areas and/or points outside the continental United States detailed herein.

REPORT OF EXAMINER WARREN E. BAKER

Served: AUG 25 1950

Upon:

Douglas M. Amann, 25 Broad Street, New York, N. Y., for Seaboard & Western Airlines, Inc.

Richard R. Pettit, Oakland Municipal Airport, Oakland, Calif., for Transocean Air Lines, Inc.

Elihu Schott, 52 Wall Street, New York, N. Y., for Pan American World Airways, Inc. (formerly Pan American Airways, Inc.).

George A. Spater, 25 Broadway, New York, N. Y., for Trans World Airlines, Inc. (formerly Transcontinental & Western Air, Inc.).

William P. Bundy, 701 Union Trust Building, Washington, D. C., for American Overseas Airlines, Inc.

John T. Iorch, 231 So. LaSalle Street, Chicago 4, Ill., for United Air Lines, Inc.

G. Stewart Henderson, 22 Light Street, Baltimore 2, Md., for Baltimore Association of Commerce.

G. Farrier, 703 City Hall Annex, Philadelphia, Pa., for the City of Philadelphia.

S. H. Hoerman, 743 Investment Building, Washington, D. C., for Port of New York Authority.

Frank E. Strohbar, 39 Chatham Drive, Dayton, Ohio, for Dayton Chamber of Commerce.

J. F. Bishop, Public Counsel.

Exceptions, if any, to matters contained in this report must be filed with the Secretary, Civil Aeronautics Board, Washington, D. C., and served upon all counsel within 10 days from the date of service shown above. Briefs may be filed and served upon all parties within 20 days after the date for filing exceptions.

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Recommended that the Board find that the public convenience and necessity do not require the certification of Seaboard & Western Airlines, Inc., or Transocean Air Lines, Inc., to provide air transportation of property between the United States and Europe and the Middle East.

Appearances:

Douglas M. Amann for Seaboard & Western Airlines, Inc.  
Richard R. Pettit for Transocean Air Lines, Inc.  
Elihu Schott for Pan American World Airways, Inc. (formerly Pan American Airways, Inc.).  
George A. Spater and Joseph S. Iseman for Trans World Airlines, Inc. (formerly Transcontinental & Western Air, Inc.).  
Howard C. Westwood and William P. Bundy for American Overseas Airlines, Inc.  
John T. Lorch and Joseph A. Reilly for United Air Lines, Inc.  
G. Stewart Henderson for Baltimore Association of Commerce.  
G. Farrier for City of Philadelphia.  
S. H. Moerman and Robert I. Helliesen for Port of New York Authority.  
Frank E. Strobar for Dayton Chamber of Commerce.  
J. F. Bishop and Dayton Casto, Jr., Public Counsel.

This proceeding involves applications of Seaboard & Western Airlines, Inc., (referred to as Seaboard), and Transocean Air Lines, Inc., (referred to as Transocean), Docket Nos. 3041 and 3818, seeking to provide cargo-only services between the United States, Europe, and the Middle East. By order of the Board, serial No. E-2860 dated May 23, 1949, these two dockets were consolidated for hearing and decision. Four certificated airlines — Trans World Airlines, Inc. (formerly Transcontinental & Western Air, Inc.), American Overseas Airlines, Inc., Pan American World Airways, Inc. (formerly Pan American Airways, Inc.), and United Air Lines, Inc. (hereinafter referred to as TWA, AOA, Pan American and United) — were permitted to intervene along with the Chamber of Commerce of Baltimore, Md., the City of Philadelphia, Pa., the Port of

New York Authority, New York, N. Y., Kenyon County Court Board, Kenyon, Ky., and the City of Dayton, Ohio.

Copies of the applications here involved together with all amendments were transmitted to the President of the United States, pursuant to section 801 of the Act. After due notice to the public and to all interested parties, in accordance with the provisions of the Act, a public hearing was held and briefs were filed with the Examiner.

The applications in this proceeding are governed by sections 401 and 801 of the Civil Aeronautics Act of 1938, as amended. Section 401(d)(1) provides, in part, that the Board shall issue a certificate of public convenience and necessity authorizing the whole or any part of the transportation covered by the application if it finds that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of the Act, the rules, regulations and requirements of the Board thereunder, and that such transportation is required by the public convenience and necessity. The Board has set forth in a number of its decisions the fundamental principles which have been given consideration in disposition of similar applications and they will not all be repeated here. However, the specific proof generally required is an affirmative showing that (1) the proposed transportation would serve a useful public service responsive to the public need, (2) such need could not and would not be adequately served by existing carriers, and (3) the public need so determined could be served by the applicant without impairing the operations of existing carriers contrary to the public interest. Section 801 provides that the issuance, denial, or amendment of any certificate authorizing a carrier to engage in overseas or foreign air transportation shall be subject to the approval of the President and that decisions of the Board shall be submitted to the President before publication thereof.

The paramount issue in this proceeding is whether the public convenience and necessity require additional air service providing for the transportation of property only between the northeast quarter of the United States and Europe and the Middle East. Roughly speaking, the area under consideration in the United States is bounded on the south by St. Louis and Washington and on the west by St. Louis and Chicago. Domestic authorization is not applied for and the services would be transatlantic in nature. Included in the area on the other side of the Atlantic are the British Isles, all of Europe including the Scandinavian Peninsula, and those countries known usually as the Middle East, with Bombay being the most eastern point. Both applicants in this proceeding seek a certificate of temporary or permanent nature, preferably utilizing an area type certification, although they have in the alternative requested designation of points as set out in Appendices I and II.

At present, with few exceptions, there is a certificated American carrier offering, among other things, air transportation of property between the points or areas for which the applicants propose service. In addition, in most instances there are also scheduled foreign carriers authorized to provide similar services. While the services of the American certificated carriers also involve the transportation of passengers, each of the carriers is operating on a basis which requires a substantial contribution by the Government of the United States in the form of mail pay. While some of this mail pay represents compensation for transporting mail, a comparison of the ton mile charges to passenger traffic and freight indicates that part of the mail pay represents subsidy for the other services. While no direct allocation of costs has previously been made by these carriers which would determine what portion,

if any, of this subsidy is attributable to the carriage of freight, it is obvious that a great portion of their freight revenues are derived through the utilization of space on passenger planes which would not otherwise be used by passengers. Therefore, to the extent any revenue from utilizing this space makes a contribution towards overhead beyond the out-of-pocket costs, it lightens the financial burden on the United States Government.

The three American carriers certificated to provide service between the areas here under consideration are TWA, AOA, and Pan American. As of the time of the hearing in this proceeding, only Pan American and TWA were operating any equipment devoted to cargo-only operations. For a short experimental period AOA operated one weekly round trip with an all-cargo plane but discontinued such operations prior to the hearing. In fact, almost 80 percent of all the freight carried by these three carriers was transported in combination passenger and freight aircraft. Inasmuch as services are already authorized into areas which the applicants herein propose to serve and inasmuch as a substantial amount of competition for the traffic already exists between the presently certificated carriers and foreign carriers, an important issue in this proceeding is the contribution which the services herein proposed by the applicants would make towards attaining those ends set forth in section 2 of the Civil Aeronautics Act which will not be provided by the carriers presently authorized.

1/ Pan American has purchased the assets of AOA and sought approval of this purchase of assets and sought approval of this purchase of assets and transfer of certificate. Approval was granted in a decision by the Board dated July 10, 1950, Docket No. 3589, et al. Consummation of the transfer of assets has been held up due to litigation.

CONTENTIONS OF PARTIES

Applicants. — The applicants contend that a certification enabling them to provide the service which they envisage would offer many public benefits not now attainable. First, it is contended that the establishment of a pool or cargo aircraft as well as an organization of personnel to operate such pool will assist in building a reserve for use by the military forces in the event of national emergency. It is contended that this pool will be used in transporting commercial freight overseas, a trade which would largely vanish in the event of such national emergency, and thereby free the equipment and personnel for use by the military. It is thus contended that certification of a cargo-only operator would provide public benefits supporting our national defense.

Secondly, it is contended that the granting of the authorization sought in this proceeding would provide a yardstick for determining the proper standard of costs for the transportation of property only which would enable the Civil Aeronautics Board to measure the efficiency of the presently certificated carriers with respect to their cargo-only operations rather than depend upon an arbitrary allocation of costs between types of traffic.

It is further urged that the certification of a cargo-only operator to provide service in this field without the benefit of any subsidy or guarantee of successful operations by the Government will stimulate experimentation in such matters as new cargo handling techniques and developmental procedures, including the cutting of costs and the lowering of rates in an effort to stimulate the movement of mass quantities of cargo. It is further argued by Seaboard that the type of operation which it proposes, namely a demand service

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operation, is suited to the needs of the shipper of freight while the operation on fixed routes with fixed schedules of the certificated carriers tied in with the movement of passengers and mail is only incidentally or accidentally convenient to a shipper. It is therefore argued that the certification of its proposed operations would provide benefits to the shippers themselves and to the commerce of the United States which cannot or will not be provided by a carrier primarily interested in the transportation of passengers and mail.

Airline intervenors. - It is contended on the part of the certificated carrier intervenors that none of the benefits urged require new certification. They assert that the maintenance of the pool of equipment and personnel as a reserve for the military forces can be attained equally well through the transportation of a similar amount of cargo by presently certificated carriers and that it is unimportant who actually employs the personnel or operates the equipment so long as it is engaged in this type of operation and thereby available for use in times of national emergency. It is thus urged that, assuming that the maintenance of a pool of equipment and personnel is desirable, it is a public benefit which can be provided adequately by the presently certificated carriers.

With respect to a cost yardstick, the certificated carriers first argue that a comparison of costs between domestic cargo-only operators and domestic passenger and cargo operators will provide a sufficient yardstick, if needed; secondly, the amount of competition from foreign as well as present American carriers in the international field has so diluted the traffic available for each individual carrier as to make it economically unsound to authorize additional carriers in this market. With respect to the experimental value of

a cargo-only operator, the certificated carriers take refuge in the statement that both of the applicants in this proceeding have been operating under exemption as irregular cargo carriers in the international field for several years and argue that neither carrier has inaugurated anything new in cargo operations and in fact in most instances has merely adopted practices and procedures of the certificated carriers with the exception of certain illegal rate-cutting, rebate, and discount practices. It is argued further by the certificated intervenors that even if it were determined that public benefits would result from the certification of one or more cargo-only carriers, the impact of another carrier in the limited air freight field would result in a decrease in revenues attainable by the certificated carriers through the transportation of freight and would thereby significantly increase the cost of the passenger and mail services of these carriers and result in an increase in subsidy required from the Federal Government.

The certificated intervenors also allege that, even if the Board should find that the benefits attainable outweigh the adverse effect on the certificated carriers and the record supports a finding that the public convenience and necessity require an additional cargo-only service between the United States, Europe, and the Middle East, neither of the two applicants is fit, willing, and able to provide the services inasmuch as each has repeatedly, knowingly, and willfully violated the Civil Aeronautics Act and the rules and regulations issued thereunder by the Civil Aeronautics Board. It is contended that this is amply demonstrated by the records in the enforcement proceedings against these two carriers, by the decision of the Civil

<sup>2/</sup> Investigation of Seaboard & Western Airlines, Inc., Docket No. 3346 decided June 6, 1950; Transocean Air Lines, Inc., Enforcement Proceeding, Docket No. 3244, decided June 6, 1950.

Aeronautics Board in finding that each of these carriers has violated the Act, and by evidence introduced into this record relating to continuation of various practices concluded by the Board to be illegal after the close of the proceedings in the enforcement cases. Thus, it is contended by the intervening carriers that under no circumstances could or should a certificate of public convenience and necessity be issued to either of these applicants.

Municipal interveners. - It is the contention of the City of Philadelphia that the principal need of the Philadelphia area is for a cargo service to Europe which would not involve transhipment. The witness for Philadelphia pointed out that the present freight service from Philadelphia to Europe requires either a shipment by air to New York, with the danger of loss or misplacement when the shipment is transferred to an international plane, or shipment by surface means to New York, with similar problems of delay. The position of the Baltimore Chamber of Commerce was somewhat similar with respect to its freight service. Baltimore asserts that it is one of the most important points in volume for exporting from the United States and in some respects exceeds the total tonnage exported by the Port of New York. This intervenor pointed out that the Board found that Baltimore required adequate international air service and certificated AOA, Pan American, and TWA to provide the service

<sup>3/</sup> from Baltimore, but that none of the carriers has as yet provided service or indicated that they intend to do so. Baltimore contended that the needs of foreign commerce, particularly of the Baltimore area, require either a one plane direct service from Baltimore to Europe or an indirect service via

<sup>3/</sup> International Air Service to Baltimore, 6 C.A.B. 621.

New York with equalized rates since the Baltimore area is directly competitive with the New York port area. The City of Dayton, Ohio took the position that it favors any increase in freight service which would expedite the shipments of that area to Europe and thus favors Seaboard, which proposes service to Dayton as one of the points in the area which it sought authorization to serve in the United States.

The Port of New York Authority contended that the certification of an all-cargo carrier to provide service between New York and Europe and the Middle East is required in order to develop air freight transportation. In general, the Port of New York Authority argued that an all-cargo carrier renders a distinct type of service differing from that provided by the presently certificated carriers in that its shipments are substantially heavier, attract substantially different commodities, and have larger volumes to different points. The Port of New York Authority also argued that the demand and area type certificate would more adequately meet the needs of air freight than the route or schedule type service which is presently authorized.

In general, the data submitted by the municipal interveners, other than the usual community of interest data, relates to the services presently authorized and is similar to that information supplied by Seaboard. In fact, a substantial amount of the data provided by Port of New York Authority relates to Seaboard. The Port of New York Authority made a survey using spot checks of the shipments of the certificated airlines and the nonscheduled airlines on different days of the week for a period of some 20 weeks. Insofar as this data is relied upon to show weight of shipment, it is similar to the shipment data submitted in this proceeding and the definition of shipment adopted at the prehearing conference was apparently used, particularly by the nonscheduled

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carriers covered in the survey. Before discussing the need for the proposed services, it appears necessary to examine the nature of the two applicants and their proposals.

#### NATURE OF APPLICANTS AND PROPOSED OPERATIONS

Transocean. - Transocean Air Lines is one of the larger irregular international air carriers and has been providing air transportation since March 6, 1946. Originally organized under the name of Onat, Transocean, under a subcontract from United Air Lines, transported personnel for the Air Transport Command across the Pacific. Transocean was incorporated on May 7, 1946 and the record shows that all of its officers and directors and over 75 percent of its shareholders are citizens of the United States. With an initial capital investment of only \$200,000 represented by 40,000 shares of no par common stock, Transocean began operation with one DC-4. According to its consolidated balance sheet of October 31, 1949, Transocean had assets totaling \$4,194,892.71. During the past year, Transocean has been operating twelve DC-4's, seven of which it owns outright and five of which it has leased, and six C-46's leased from the U.S. Army.

During the past 3-1/2 years, Transocean has obtained experience operating both scheduled and nonscheduled flights to all corners of the world. It has island bases on Honolulu, Wake, Guam, and Okinawa, major operating bases at Oakland, California and Bradley Field, Windsor Locks, Connecticut, and enroute bases at Gander, Newfoundland, Shannon, Eire and Rome.

As part of its operations, it established a subsidiary corporation known as Aircraft Engineering and Maintenance Company for the overhaul of aircraft on a production line basis. This company has just completed an overhaul

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contract of C-54 aircraft for the Army Air Forces involving more than 235 complete overhauls during the last 19 months at an average cost to the Government of approximately \$35,000. Transocean also acquired a controlling interest in the Oakland Aircraft Engine Service Company and established the Taloa Academy of Aeronautics, providing public pilot training facilities in aircraft from 65 horsepower to the largest four-engine equipment. It operated for several years under contract with the Civil Aeronautics Administration the experimental landing aid station at Arcata, California where the visual aids to navigation phase of all-weather flying was being developed.

In 1946, Transocean's operations included the carriage of freight and passengers between the United States, Manila, Hongkong, and other points in the Far East under the aforesaid contracts with the military forces. It later operated scheduled services under contract with Philippine Airlines between California and Manila under that carrier's foreign air carrier permit and between Manila and Spain. Under this management contract, Transocean provided not only the equipment and personnel, but also managerial direction of the scheduled operations. Subsequently, it sold two of its DC-4's to Philippine Airlines and after a transitional period, Philippine Airlines operated its services under its own direction. Since the conclusion of its management contract with Philippine Airlines, Transocean has operated in the Pacific pursuant to contracts entered into with the major construction companies establishing defense facilities on the various Pacific island bases, particularly Wako, Guam, and Okinawa, and has provided a certain amount of irregular common carriage flights between California and Hawaii and other islands transporting both passengers and cargo. During 1949 Transocean was awarded a contract for a weekly flight carrying freight between California and Tokyo for the Military

Air Transport Service and a contract by the Navy to carry freight weekly between Seattle and certain Alaskan points.

Transocean's operations in the Atlantic began in 1947 when it provided, under contract, a service for the Province of Ontario transporting immigrants from the United Kingdom to Toronto, involving about 150 westbound flights. The company also provided services under a contract with the International Refugee Organization (IRO) of the United Nations to transport displaced persons from Europe to South America. In addition, it provided services across the Atlantic for the armed forces for transportation of army personnel and property in connection with the Berlin airlift. The breadth and scope of the operations of Transocean have been considered by the Board in two previous cases and more detailed studies of the operations of Transocean are contained therein.<sup>4/</sup>

Transocean proposes in this proceeding, if its application is granted, to operate twice-weekly flights between the New York area of the United States and Shannon, Ireland with C-54 (DC-4) all-cargo aircraft. Traffic to Europe and the Mediterranean points would be distributed from Shannon over three routes operated with C-46 all-cargo aircraft. This applicant contends that the DC-4 aircraft is the best type to be utilized for the over-water flight to Shannon, while on the shorter hop operations from Shannon to the various points in Europe and the Mediterranean the C-46 is preferable. The operations out of Shannon would proceed over three loop routes: the first from Shannon to Glasgow, Oslo, Stockholm, Copenhagen, London, and back to Shannon; the second proceeding via London to Brussels, Amsterdam, Hamburg, Berlin, Munich, Frankfort and back through London to Shannon; the third would proceed via London to Paris, Geneva, Rome, Athens, Cairo, and return.

<sup>4/</sup> Pacific-Northwest-Hawaii Service Case, Docket No. 2537, et al.; Transocean Air Lines, Inc., Enforcement Proceeding, Docket No. 3214, et al.

Transocean proposes a service which would be provided on a scheduled basis and would differ from those of the certificated airlines primarily in the cost of service to the shipper. Transocean does not contend that these cargo services would consume all of its capacity and expects to continue to operate its aircraft and employ certain of its personnel in the carriage of passengers. It proposes that its certificated cargo operations should be a separate operating entity subject to such controls and accounting responsibilities as the Board may impose. In view of its other activities, Transocean proposes to allocate one C-54 aircraft and two C-46's to the certificated cargo operations. It is anticipated that various specific aircraft would be utilized to perform the operation between the United States and Shannon but that the actual portion of the flight time on all the planes would be equivalent to the use of one aircraft to perform this service. Transocean proposes to operate at average rates of approximately 65 cents a pound which results in about 32.5 cents per ton mile. Typical rates proposed are 57 cents a pound between New York and London and 73 cents a pound between New York and Rome. These rates are approximately 25 to 30 percent below the current commodity rates of the certificated carriers for shipments of over 100 pounds. Transocean contends that with these rates and load factors of approximately 60 percent, it would obtain a profit since it computes its break-even need on a 55 percent load factor. Transocean asks for no mail or parcel post authorization but stated that it is willing to accept the obligation to transport such mail or parcel post if the Board finds that it is required by the public convenience and necessity.

In asserting that its proposed operations would provide public benefits which cannot or will not be provided by the presently authorized carriers, Transocean points out that an orderly development of foreign air freight is

a useful public service and the real question is what quantity of the foreign freight not now transported by air would be encouraged, developed, and transported in air transportation if Transocean were certificated. Transocean contends that the potential air freight which may be transported by air carriers between the United States and Europe depends upon the penetration of surface movement which can be accomplished. At present, less than 1/150th of the total movement between the United States and Europe is transported by air. The applicant contends that the diversion of even a small portion of this present movement to air transportation would be an adequate potential to support an additional carrier. In computing its estimated potential, Transocean alleges that the past operations or performance of the various air carriers is of relatively limited value in forecasting the future potential. The past performance merely shows the variety and types of shipments which can be moved by air but not the quantity which will be moved. Transocean bases its estimate primarily on the principle that since air transportation is faster than surface transportation the volume of air transportation will vary primarily with the closeness of the cost of transporting by air to that of transporting by surface transportation. In other words, if the costs to the shippers are reduced, more freight will go by air and less by surface means. While some small economies may be made in the future in reducing cost to the shipper through new methods of handling, packaging, and the like, the major savings in those respects have already been accomplished. Transocean thus contends that the important factor in determining potential is the amount which the actual shipping rates may be reduced.

In arriving at its basic figures, Transocean pointed out that commerce between the United States and Europe during the prewar years was less than

during the postwar years both in regard to volume and value of goods. It estimates that a substantial increase in the flow of goods between the United States and Europe will be continued in the future. Transocean assumes the basic potential for air freight is governed by the value of the goods. It confines its estimate to the portion of the goods moved between North America and Europe which has a value of \$1,000 per ton (50 cents a pound), estimated as approximately 300,000 tons. Utilizing a 4,000 mile average haul, this would reflect 1,200,000,000 ton miles per year. Without determining the exact amount which could be moved at the specific rate (32.5 cents) per ton mile which it proposes, Transocean indicated that approximately 30,000 tons or 120,000,000 ton miles would be moved at a rate of 20 cents a ton mile, which is eight times the total volume moved by all certificated carriers in 1948. Transocean pointed out that this represents 10 percent of the potential and that as much as 25 percent might be obtained if rates were reduced to as little as 10 cents a ton mile. On the basis of its proposed operations which assume a 16,000 pound capacity, Transocean would be required to obtain 9,700 pounds average per flight, or a 60 percent load factor, across the Atlantic. This would amount to 4,035,200 ton miles per year as compared to the 120,000,000 ton miles potential estimated at 20 cents per ton mile.

Transocean readily admits that its scheduled all-cargo service in a great many respects will not differ from that operated now or in the future by the certificated airlines. It contends, however, that service to the shipper consists not only of frequency of service, operations to specific points and proper handling of cargo, but of cost to the shipper. In this respect, Transocean contends its services will be substantially different from those of the other carriers. In view of its basic premise that potential

depends upon the penetration of surface movement and penetration depends to a great extent on reduction in cost to the shipper, Transocean alleges that it will provide a service to the public, i.e. a low cost service, which the presently certificated carriers are not providing and cannot provide.

The validity of Transocean's contention must of necessity rest on the basic cost or expense estimates set out by Transocean. Transocean contends that it has demonstrated in the past its ability to provide a low cost service because it has had to operate at a low cost to survive economically. It contends that its organization has none of the high cost overhead which has become a mark of the certificated airlines because it could not afford such luxuries. It contends furthermore that the operation of the certificated carriers in the highly competitive passenger market has required those carriers to obtain deluxe aircraft with major investments resulting in considerable interest debt. It is pointed out that the substantial interest payments must be made out of the rates charged to passengers, freight, and mail before an operating profit can be shown and that such type of organization cannot and will not be able to operate in the low cost field. On the other hand, Transocean has equipment which was purchased at relatively low cost and modified by its own personnel, and a great portion of its personnel actually own an equity in the airline. Transocean contends that as a result it has been able to operate at low costs in the past and will be able to continue to so operate in the future.

Transocean admits that not only must it show the public benefits which would be offered by its service which cannot and will not be provided by the presently certificated airlines, but that it must show that its operations

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would not have such an adverse economic effect on the other carriers as to endanger their financial position. Transocean asserts that it will not divert traffic from the other carriers but will increase the penetration of the traffic which is presently an untapped potential primarily moving by surface transportation. Transocean contends that the certificated carriers in reality are not concerned with diversion of the amount of traffic they presently carry, but that they desire to reserve all future traffic for their own development when and if they find it convenient. Transocean contends that if it is certificated, it will so stimulate the development of air freight that the certificated carriers will transport more air freight than they are presently carrying.

Transocean points out that Pan American's rates in 1946 provided an annual yield per ton mile for cargo of 77.53 cents while in 1949, after substantial competition by TWA, AOA, and irregular carriers such as Seaboard, Pan American's rates provided a yield of 43 cents per ton mile. Nevertheless, Pan American's cargo revenue increased from \$2,193,800 in 1947 to \$3,492,688 for the year ending September 1949. Since Pan American alleges that this cargo business has been profitable, it is obvious that the decrease in cost to the shipper resulted in greater volume and revenue to the carriers. Based on these facts, Transocean contends that if it is successful in operating at reduced rates and thereby increasing the air freight which is carried, the result will be of benefit not only to Transocean but also to the certificated carriers.

Transocean also points out that the arguments by the certificated carriers as to the limited potential and the lack of need for an additional competitor based on the unused capacity in their own combination aircraft indicate a

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fundamental misunderstanding as to the needs of the air freight shipper. Transocean contends that failure of the present carriers to reduce rates to fill the unused capacity, particularly when they are adopting the added cost theory with respect to freight, further justifies a conclusion that they cannot and will not lower the cost to the shipper and thereby stimulate freight unless the Board certifies Transocean.

According to Transocean's forecast, for its operations during the first year its C-54 aircraft will fly 627,744 statute miles while the C-46 aircraft will be operated 535,548 miles. According to the estimate of profit and loss for this first year, operating revenues of \$1,303,736 and expenses of \$1,202,036 will be incurred with a resulting net operating profit of \$106,700. This estimate is based on an assumed direct flying cost of 80.04 cents per plane mile for C-54's and 74.21 cents per plane mile for C-46's. The ground and indirect expenses are calculated at 25.97 cents per plane mile with a resulting cost of \$1.06 and \$1.00 per plane mile for C-54's and C-46's, respectively. This estimate of profit and loss is based on an assumed average load of 60.5 per cent of capacity, or 9,700 pounds in each direction, with an average yield of 32.5 cents per ton mile. Transocean proposes to operate its C-54 with three crews consisting of a captain, co-pilot, navigator, flight radio operator or purser and second officer, and its C-46's with three crews consisting of captain, co-pilot, and another crew member. The proposed schedules result in 3,224 hours annual flying for the C-54 aircraft and 2,555 hours for the C-46 aircraft. Transocean expects to rotate its crew members from the C-54 on some of the C-46 flights so as to keep each crew member's flight time within the legal limit of 1,000 hours per annum, giving an annual average of 963 hours per crew. The C-46 schedules as shown by the proposed operations will not

all depart at the same time from Shannon and thus the service between the United States and points in Europe will vary from 15 hours to 4-1/2 days.

Transocean's actual estimate of cargo to be transported is approximately 1,000 tons during the first year with a resulting utilization of aircraft on the transatlantic run of about 6.22 hours per day.

Essentially, Transocean's application is founded on a proposed benefit to shippers of a lower cost operation at rates approximately 25 percent lower than those presently being charged by the certificated carriers. The validity of its estimate of profit and loss depends upon its ability to operate the number of miles proposed at as low a cost as its estimates show and still obtain an average load factor at the rates proposed sufficient to provide the revenues shown. If its costs are exceeded or if its load factors are not obtained, a net operating loss is bound to ensue.

Seaboard & Western. Seaboard was incorporated on September 12, 1946 with an initial capital of \$20,000. Subsequently, through sale of stock this was raised to \$192,337. Operations began on May 10, 1947 under a contract using the one DC-4 which was owned. Seaboard obtained a letter of registration from the Board on July 8, 1947 and, after two years of operations, had completed 584 North Atlantic crossings involving 2,750,000 revenue miles utilizing four DC-4's, three of which were leased. In 1948, Seaboard purchased a second DC-4. By the first of 1949, Seaboard had obtained a gross income of \$3,971,258 with a net profit before taxation of \$309,866 and the assets of the company totaled \$1,033,000. The principal operation of Seaboard was transporting freight across the Atlantic under its irregular authorization and during the first six months of 1949, Seaboard transported a total of 1,071,406 pounds of air freight,

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a substantial portion of which was pursuant to contracts with the military forces of the United States in support of the Berlin airlift. Excluding such military air freight, Seaboard carried commercially 797,826 pounds in this period. In addition to the freight operations, Seaboard provided a substantial amount of passenger transportation pursuant to contracts with the military forces, with steamship companies, and with Youth Argosy.

Seaboard has generally not provided its own major overhaul and maintenance but has contracted for such services. At present, Willis-Rose Corporation, the successor to Willis Air Service, Inc., provides maintenance for Seaboard's aircraft. This corporation has provided maintenance, overhaul, or conversion work for the United States Army Corps of Engineers, Robinson Airlines, KLM (Royal Dutch Airlines), FAMA (Argentine Airlines), Icelandic Airlines, Al Israel Aviation Company, Globo Freight Airline and Cruzeiro Do Sul and is located at the New York International Airport. Willis-Rose is the Douglas Aircraft Company Approved and Licensed East Coast Service Center. Seaboard has part of its maintenance work, particularly on engines, performed by the Pacific Aeromotive Corporation, Atlantic Division, at Linden, N. J.

Seaboard is headed by Raymond A. Nordon, president, who was formerly in the aviation underwriting business but who served with the Army Air Force and the Air Transport Command as a pilot and later as a staff officer during the war. Mr. Arthur V. Nordon is vice-president and has been in active work connected with aviation for 11 years, has served as a ferry pilot of the Army Air Forces, as a flying safety officer, and has supervised the safety program of the Indo-China Division of the ATC which operated a fleet of 495 transport-type aircraft principally over the famous Hump route into China. A substantial number of the

subordinate officers also have airline experience, either in actual operations or in sales and services. In view of the actual operations of this air carrier during the past three years, it appears unnecessary to examine the qualifications of the subordinate personnel to determine the physical ability of the carrier to operate the services proposed. However, the flight personnel of Seaboard all have substantial amounts of flying on four-engine equipment. Of Seaboard's 28 pilots and co-pilots, all but 3 co-pilots were captains of Army Transport Command airplanes during the war with full experience in international flying with four-engine Douglas C-54 aircraft. These pilots average over 5,000 total flight hours, over 3,000 flight hours in four-engine equipment and over 2,500 flight hours in C-54 aircraft. They have logged more than 400,000 miles of over-ocean flying, averaging more than 100 crossings of the North Atlantic.

Seaboard points out that the three international certificated American carriers transported 593,243 pounds of freight and express across the Atlantic during the first six months of 1946, while those three transported 2,916,629 pounds during the same six-month period in 1949. With the inclusion of freight transported by Seaboard, over 4,000,000 pounds of air freight were transported in the first six months of 1949 in this area. Seaboard alleges that this substantial increase in air freight carried demonstrates that a great untapped potential is still available if proper rates and service are provided. Seaboard estimates that during the first year of operation, or Phase I, it would transport in its own equipment 4.5 million pounds eastbound and 3.7 million pounds westbound, or a total of 8.2 million pounds across the Atlantic. An estimate of 14.6 million pounds was made for the second year, Phase II. This would require Seaboard to carry during the first year more freight across the Atlantic than

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all the American carriers combined, based on the level attained during the first half of 1949. It is recognized that a substantial amount of freight was flown in support of the emergency during this period due to the international situation in Europe. One of the most controverted points in this proceeding is the actual air freight potential which could be tapped by not only the United States carriers but foreign carriers as well. None of the certificated carriers made an absolute estimate; rather, each merely stated that the amount of potential was limited and could not reasonably be expected to increase substantially. On the other hand, Seaboard made an estimate through itemizing the data available in the foreign trade records of the United States Department of Commerce and the Bureau of Census and analyzed the imports and exports by commodity and by origin and destination and utilized various factors which were revealed in those reports to indicate the extent of the air freight potential.

As a preliminary basis for ascertaining what portion of this total volume of freight movement might reasonably be expected to be air freight potential, Seaboard totalized, by commodity, the volume of imports and exports having a value of one dollar or more per pound. To this potential were added certain commodities which experience demonstrated would move even though their value was less than a dollar per pound. After utilizing various judgment factors such as inherent value in markets, possible deterioration in transit of the goods, the physical characteristics and the emergency nature of certain shipments as well as the possibility of developmental or promotional shipments, the analysis witness for Seaboard concluded that as an absolute air freight potential in the areas covered by this proceeding, there were 593,000,000 pounds available eastbound and 82,000,000 pounds westbound.

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pounds in both directions. Mr. Drew, the aviation consultant employed by Seaboard, pointed out that this estimate represents a potential from the entire area and that the amount which would be realized by an individual carrier or by all American carriers would be affected by the number of points served in each country and the number and effects of competitors. No estimate was made of the amount which would be carried by Seaboard.

The president of Seaboard made a traffic estimate which resulted in the anticipated 8,2 million pounds per year heretofore mentioned. Mr. Norden testified that he went through the potential set forth by Mr. Drew item by item and exercised his judgment in determining what portion of each category could reasonably be expected to move on the amount of service which his company proposes to offer. On this basis he arrived at the 8,2 million pounds per year for Phase I. The supporting data relating to the separate categories was not furnished for purposes of cross-examination or analysis since it had been destroyed by Mr. Norden who stated "when we had arrived at the figure, we were glad to get rid of the papers." It appears significant in evaluating the traffic estimate made by Seaboard that an hiatus exists between the potential estimate of Mr. Drew and the traffic estimate, bridged only by the thought processes of Mr. Norden which are not set forth in sufficient detail so as to be subjected to a critical analysis. Thus, despite the voluminous data examined by Mr. Drew, the traffic estimate depends solely on the judgment of Mr. Norden.

Seaboard also estimated the number of aircraft miles which it would operate to carry this amount of freight. Inasmuch as the air freight was not broken down by origin and destination points, an average length of haul of 4,150 statute miles was assumed, which represents an experience average of Seaboard in its

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previous operations between the United States and Europe. An additional 2,250 miles were added to the 10 percent of the trips which continued to the Far East. The mileage assumed both for revenue and expense purposes introduced a variable in the calculation of these figures which is extremely difficult to rely upon. Seaboard calculates that its average yield projected in Phase I would be 28 cents per flight pattern mile eastbound and 26 cents westbound. This calculation utilizes Mr. Norden's estimate that flight pattern miles of 4,150 are equivalent to 4,000 standard miles upon which the actual charges will be based. On this basis average rates of 58 cents a pound New York to Geneva and 54 cents a pound from Geneva to New York would be indicated. Furthermore, the estimates of revenues by Seaboard involve an average load factor of 80 percent with an estimated profit before taxes of between 10 and 12 percent in Phase I. Admittedly, this load factor is higher than that attained by any domestic or international air freight carrier today, but Seaboard contends that due to the flexibility of its demand service such a load factor is reasonably attainable. Seaboard contends that rather than send a flight out at 6:00 in the evening because it is scheduled for that time with only 75 percent of its capacity used, the flight would be held until more nearly 100 percent capacity was attained. On the other hand, Seaboard is unwilling to make any definite commitment as to how long the maximum period would be for which they would hold freight or an aircraft in an attempt to obtain a 100 percent load factor, particularly with respect to the well known seasonal and directional unbalance in freight movement between the United States and Europe.

It is Seaboard's contention that the air freight potential in the international field requires the certification of a specialized all-freight carrier

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for proper development. It contends that none of the certificated carriers have made a proper effort to develop the potential freight traffic which exists, a substantial part of which is presently and has been utilizing surface transportation and that these carriers with their primary interest in the more lucrative passenger, mail, and express traffic cannot and will not properly develop air freight in the future. It asserts that there is a great air freight potential presently being carried by surface transportation which can only be attracted to air transportation through a substantial reduction in rates and through the offering of a service primarily geared to the convenience of the freight shipper alone rather than being given secondary consideration on aircraft and schedules primarily designed to carry passengers. Seaboard argues that the whole organization of the presently certificated carriers is devoted to passengers in thought and in action and that in view of the subsidy features of the mail pay ~~these carriers~~ have neither the inclination nor the need to properly develop the air freight business. Seaboard expresses the view that there is a fundamental conflict between schedules designed to transport passengers and the need of shippers for convenient schedules. It is argued that the factors which develop substantial traffic flows in the passenger and mail portions of the business do not necessarily reflect the locations at which substantial flows of freight can be and should be developed. Seaboard points out that there is a great fluctuation in the need for air freight transportation as to time and location which not only does not necessarily coincide with the fluctuations of passenger and mail traffic, but often is diametrically opposed to their needs. It thus contends that the schedules designed to provide adequate passenger service with accommodations in the aircraft for transportation

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of freight provide entirely inadequate space for freight at certain times and between certain points while providing great surpluses of unused space between certain points and locations at other times. Seaboard believes that due to the greater yield per ton mile in passenger traffic, a certificated carrier will not be able to give the proper effort to developing air freight. It asserts that the only way a substantial volume of international air freight will be developed is through the operations of a non-subsidized carrier engaging in freight transportation only, since that organization must succeed or fail solely on its ability to develop air freight and provide adequate service to freight shippers. Seaboard states that a proper development of air freight will not only tap the substantial potential freight traffic in high value commodities which now moves by surface transportation, but will in fact create new markets and new lines of trade by bringing certain markets and producers closer together through the speed of aircraft.

#### DISCUSSION

Demand service. - Before discussing the validity of the estimated potential, certain aspects of the proposed services should be considered. In addition to the low cost of its services, Seaboard relies heavily on an argument that its service, being a demand service, is of more benefit to the shippers than that of the certificated carriers and also that the use of all-cargo planes is more beneficial to shippers than combination planes. The words "demand service" as used by Seaboard to characterize its contemplated operations must of necessity have a defined meaning before the concept can be adequately discussed. Literally, it has been defined by Seaboard less in terms of what it actually is than in terms of what it is not. First of all, it is not a scheduled service since there will be no published schedule. The service will be operated

when sufficient freight is aboard the aircraft to justify a departure. Further, the rigid route concept will not be followed by Seaboard, which will send aircraft to specific points when freight is available.

From the standpoint of the carrier, this concept of demand service would appear to result in extremely flexible operations. However, either there will be an operational problem in determining when and where each individual flight will operate or there will be a tentative schedule, no matter how flexible or secret, within the organization of Seaboard which will allow some planning by crew members and operations personnel for departures. An airplane just does not happen to be waiting fully gassed for a transatlantic flight with a crew aboard when a shipper brings the last needed pound of cargo into the shipping room of the carrier.

From the standpoint of the shipper, however, "demand service" as here defined means lack of public information. The shipper will not know when a departure will take place, to what points it will carry freight, or at what time it will arrive at any specific destination except through personal contact with the carrier. The attractiveness of this kind of service will depend primarily on an experience record or verbal information given by employees of the carrier. To a certain extent, this does not differ greatly from the freight services offered to shippers by the certificated airlines. Except for space confirmed on a reservation basis, shippers do not generally know in advance whether cargo they offer for shipment will leave on any specific flight. However, they do know that a certain number of schedules will be operated between certain points. In view of the published schedules of a certificated carrier, a shipper will have more definite information on the amount of space which will

actually be operated between points and the average flight time when freight is actually lifted.

From the standpoint of the carrier, Seaboard's nonscheduled demand service would appear to be a more flexible operation offering substantial economics through the ability to attain maximum load factors. The apparent flexibility will be limited somewhat, particularly with respect to return flights, by the necessity of obtaining some reasonable utilization of equipment. Whether a high utilization can be achieved along with maximum loads on a nonscheduled operation is problematical. Seaboard alleges that an economical operation does not provide a scheduled amount of service, as the certificated carriers do, day in and day out between points where there is no freight merely to have an inadequate amount of service available at the times when there is a demand. The so-called scheduled service of a certificated airline is more flexible than suggested by Seaboard. Schedules are changed frequently to meet seasonal trends in traffic, extra sections are operated at times, and flights occasionally cancelled. In essence, both Seaboard and the certificated airlines try to anticipate the demand for service between points and plan on sufficient flights to carry the available traffic. Seaboard, with no published schedules, is merely able to make more minute changes in its operations without public notice.

On the other hand, Seaboard's services, having no published schedules, would be less subject to supervision by the Board and afford less advance planning by the shippers. The published schedules serve to indicate the general level of service between points without the necessity of actual contact with the carrier. Their absence requires a shipper in each instance to ascertain from the carrier whether any service is actually operated to certain points

and if so, within what period of time a shipment can be transported. This type of service would be particularly unsatisfactory to the small shipper. It could be very easily modified by the carrier to fit the need of any particular large shipper. Thus, it is possible that the services of Seaboard on a so-called demand service basis would result in preference for large shippers and discrimination against small shippers.

Seaboard contends that the economic existence of Seaboard without mail pay would depend upon providing a satisfactory service to the shippers and that the Board could safely entrust the supervision of its operations to the facts of economic survival. This argument entirely ignores the fact that a certificated carrier is a common carrier charged with public obligations. A common carrier is not only obliged to provide satisfactory service to enough persons to make money, but is required to provide service to all the public within the limits of its facilities on an impartial and nondiscriminatory basis. The Board cannot fulfill its statutory duty under section 2(c) of the Act in promoting "adequate, economical and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive practices, \*\*\*" by accepting the standard of economic success alone as proof that the public interest has been served. It may well be that such success can be obtained more easily by granting undue preferences or through unjust discrimination.

The lack of published schedules makes more probable the providing of service to a large shipper when and where he desires in preference to the small competitor. This is not an accusation that Seaboard will deliberately make it impossible for small shippers to use its services, but merely a conclusion that

the lack of any published schedules handicaps the small shippers who might through a combination be able to fill the plane in competition with a larger shipper whose freight by itself would be sufficient to determine the time of departure. The large shipper can always influence the timing of flights but the lack of public notice of these timings may well prevent the smaller shippers from utilizing them even when less than a full plane load shipment is made by a large shipper.

It is noted that many common carriers, particularly railroads, do not publish freight schedules since freight is transported within a reasonable period of time after its receipt due to the general frequency of freight train operations. The lack of published schedules may be of little consequence to shippers between points where a substantial frequency exists. Between these points the experience of the shippers may well be sufficient economic compulsion to insure equal treatment. However, between points where frequencies are limited, the public has a sufficient interest in knowing when a service is available to require some publication of the type of service rendered.

Furthermore, the arguments in favor of demand service lose a substantial amount of their validity because of Seaboard's unwillingness to specify any minimum of freight offered at particular points to justify service, any maximum of time which freight would be held before being returned to the shippers, or even any minimum amount of service between any points. Thus, despite the characterization of Seaboard's service as a demand service, there would appear to be no showing that a demand service would offer more benefits to the shipper than the so-called scheduled service.

Nature of freight and express service. - Seaboard has characterized its past services and its proposed future service as bulk freight transportation and tramp operations. It is contended that its operations involved bulkier and heavier shipments than the express-type shipments carried by the certificated airlines. Information was submitted by all parties relating to weight of shipments for a two-month period under a definition of "shipment" agreed upon at the prehearing conference by the parties. Under this agreed definition, an examination of the shipments carried by Seaboard, Pan American, TWA and AOA sustains the contention that the greater portion of Seaboard's shipments were in heavier classifications than those of the certificated carriers. According to Seaboard's analysis, 59 percent of the total poundage carried by Pan American and TWA during October 1948 and March 1949 consisted of shipments of 300 pounds or less whereas only 16.8 percent of Seaboard's commercial poundage was made in shipments of less than 300 pounds. Approximately 50 percent of Seaboard's commercial poundage resulted from shipments of more than 1 ton while approximately 16 percent of the poundage of Pan American and TWA was in this category. Approximately 21-1/2 percent of Seaboard's poundage was in shipments of more than 6,000 pounds while less than 2 percent of Pan American's and TWA's was in this category. Upon the basis of this data, Seaboard contends that its past operations have been in a market primarily developed by Seaboard and undeveloped by the certificated carriers. Seaboard also utilizes this characterization of its service to minimize the potential diversion in the event of its certification.

5/ "Shipment" was defined as "goods moving from one consignor to one consignee on one flight."

Although, under the agreed definition of "shipment", the record clearly sustains the greater bulk freight proportions of Seaboard's shipments, Seaboard's conclusions do not necessarily follow. It is apparent that the rate breaks in Seaboard's tariff were far more favorable for bulk shipments than those of any of the certificated carriers and encouraged consolidation of shipments by forwarders and large shippers even though such consolidation might not have been required to meet the needs of the shippers. Seaboard operated only all-cargo planes with a limited number of departures per week. These departures being on a demand basis were more sensitive to the needs of shippers who could accumulate sufficient poundage to dictate the date of departure. Thus, shippers having smaller amounts or being unable to delay numerous orders for a few days to accumulate sufficient poundage to influence departures of an all-cargo plane would more naturally utilize the combination flights of the certificated carriers. Furthermore, included in the shipments of Seaboard were a number of full plane load lots accumulated from shippers by KLM at Brussels. Taking all these factors into consideration, a comparison of the weight of the shipments carried by Seaboard with that of other carriers has little significance.

As an example, Seaboard's exhibits included one shipment of 7,955 pounds consisting of 342 separate pieces solicited by KLM from the public at large. Pan American showed that of the 34 shipments listed by Seaboard during October 1948 and March 1949 which weighed over 2,000 pounds, 3 were military shipments, 2 were outside the area here applied for, and 3 were consolidated shipments for KLM with 166, 342 and 207 pieces, respectively. Of the remaining 26, only 9 consisted of 1 waybill while the remaining 17 were accumulated from 114

waybills. Of the 114 waybills, only 7 actually covered freight weighing 2,000 pounds or more. It is thus apparent that the definition of "shipment" utilized in the proceeding does not establish the true nature of the freight business of either Seaboard or the certificated airlines. An examination of the data submitted for October 1948 and March 1949 indicates that the weight of the individual pieces contained in the "shipment" recorded by Seaboard was approximately the same as the weight of the individual pieces contained in the shipments of the certificated carriers.

Seaboard alleges that the weight of the individual pieces in a shipment has no significance in determining the type of traffic carried by the various carriers or in the type of service that is required. On the other hand, the certificated intervenors claim that due to the greater frequency of the combination flights and the available capacity on those flights, a great portion, if not all, of the shipments carried by Seaboard could have been transported by breaking the shipment into individual lots and consolidating them upon arrival at destination. Seaboard takes the position that this was impracticable because in the field of international freight customs clearances are complicated and time consuming and consular invoices must accompany shipments along with the bills of charge and letters of credit covering entire shipments. Seaboard contends that shippers require their shipments to be delivered in one piece and expect them to be transported in one aircraft. On the other hand, the certificated intervenors point out that not only is it practicable to move bulk shipments consisting of small packages in lots on various aircraft, but that they have done so many times in the past. If in fact there is available on the combination aircraft the amount of space alleged to be available on the

average, it would appear that breaking shipments after they are received by the carrier and transporting them on numerous combination flights and then reconsolidating them could offer a faster service due to the greater frequency of combination flights. It is obvious that a shipper would prefer all of the pieces offered as one shipment to proceed on one aircraft, if it would not delay the ultimate delivery, in order to minimize misplaced portions of a shipment.

If a frequency of one flight per day or more is attained with all-cargo aircraft, it appears probable that shippers who combine a large number of individual packages in one shipment will prefer the service of an all-cargo plane. On the other hand, even the operations of Seaboard contemplate reshipping and warehousing stops which may prevent the benefits of the daily all-cargo service from being available to most of the points.

Diversion. - With respect to diversion, two questions have been raised. The certificated intervenors not only assert that certification of Seaboard would divert traffic in the future, but also that the major portion, if not all, of Seaboard's past traffic has actually consisted of diverted freight.

In addition to the general diversion allegations, the certificated intervenors attempted to show diversion with relation to specific shippers. The witnesses utilized by TWA and AOA testified that Seaboard had diverted the accounts of certain shippers. This testimony was based on hearsay evidence and not on personal knowledge. The Examiner ruled that the testimony of these witnesses would be given no weight unless facts supporting this testimony were brought to his attention by competent proof in the record. Little attempt was made in most instances to point out any competent evidence relating to such alleged diversion. In those instances in which specific dates and figures were

placed in the record, subsequent data required of Seaboard relative to these shippers failed to disclose any substantial correlation between loss of traffic by the certificated carriers and a similar increase in traffic by Seaboard.

Furthermore, during the same period in which diversion by Seaboard was alleged, substantial increase in foreign air freight competition took place. Sabena entered the air transportation field at approximately the same time as Seaboard in the latter part of 1947, KLM inaugurated all-freight flights in August of 1947, and BOAC as well as Air France also showed substantial cargo increases in the latter part of 1947 and early 1948. Despite the Examiner's ruling relative to the testimony of these witnesses, substantial reliance was placed on the testimony by TWA in its brief to the Examiner. Nevertheless, no credibility has been given to this hearsay testimony.

With respect to past diversion, it is difficult, if not impossible, to establish that there has been any substantial diversion by Seaboard from the certificated carriers. Since the beginning of the operations of Seaboard, there has been such a remarkable growth in the volume of freight transported by air across the Atlantic that it would appear that Seaboard and the certificated airlines have been developing their traffic from the same traffic pool.

With respect to future diversion, the situation is not necessarily the same. Both Seaboard and Transocean admit that at present rates a substantial growth in air freight cannot be anticipated. Each carrier proposes to reduce rates by substantial amounts. Even assuming that a reduced rate will substantially increase the traffic to be carried, the certificated airlines must meet the rates to maintain the traffic they presently carry and to obtain a sufficient portion of the increased potential to replace the income from

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freight lost through reduced rates. Thus, either the carriers will be faced with substantial diversion or the rates utilized by all carriers must attract a sufficiently greater amount of freight to provide a net income from freight substantially greater than that presently shown.

The certificated carriers argue in this case that there is ample available space on combination planes to transport all the cargo which Seaboard has carried in the past. In support of this argument, some rather imposing figures of unused available ton miles of space were placed in the record. For instance, TWA showed that in the year 1948 it had unused capacity on its DC-4 passenger aircraft of 9,490,308 ton miles, an unused capacity on its Constellations of 4,033,109 ton miles, or a total unused capacity on combination planes of 13,825,417 ton miles. In arguing that this available space could have been used to carry the freight utilizing the service of Seaboard, TWA showed that the actual unused space on the critical leg between Gander, Newfoundland and Shannon, Ireland, or between Gander and Santa Maria, Azores Islands, could have carried a total of 2,478,424 pounds during the year 1948. After reducing this by the amount of company material carried, a total unused capacity of 2,369,000 pounds was still available. TWA then pointed out that during 1948 Seaboard carried 514,394 pounds between the United States and points in Europe served by TWA, or slightly over 1/5th of the capacity that TWA had unused and available for this traffic. In the reverse direction between Europe and the United States, the figures were 2,166,000 pounds available for the 200,536 pounds carried by Seaboard between the points served by those two carriers. On paper, this appears to adequately dispose of the contention that there is a need for additional service.

However, the actual availability of this space between the points needed and at the times needed is seriously questioned. If, in fact, such space was really available, a question arises as to why TWA operated any all-cargo planes. During the year 1948 in which some 13 million ton miles of unused space on combination planes were available on TWA, according to that carrier, TWA actually carried 1,755,000 ton miles on all-cargo aircraft which is less than 13 percent of the unused capacity on the combination aircraft. The conclusion is inescapable that either the space on the combination aircraft was not available where and when needed or the operation of all-cargo aircraft was not honest and efficient management on TWA's part. The answer may be that the available space consists of averages. It may be made up of a great number of instances in which the space was utilized over the critical leg at a time not utilized over other segments. The space may possibly have been available on days of the week on which freight was not normally shipped. The presence of unused space on some flights without evidence that it would be available when and where needed cannot be used as justification for preventing the authorization sought herein. A similar argument was advanced by Pan American relative to its combination flights which requires similar disposition.

The certificated carriers also contend that they have sufficient unused space on their all-cargo flights to carry the traffic which will move, and, if additional traffic is available, that they have sufficient aircraft to put on more flights. On the other hand, it is argued by Seaboard that the all-cargo flights of the certificated carriers are primarily run to handle company material required to support the passenger-mail operations, often involving shipment of aircraft engines, spares, and material too large to fit into the cargo spaces

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of the combination aircraft. It is contended that they are run on a schedule primarily designed for the convenience of the certificated carrier rather than for a shipper and, as evidence of this fact, it is pointed out that on the all-cargo flights of TWA during 1948, 620,665 pounds of company material was carried as against 461,482 of commercial cargo and 94,000 pounds of military cargo. Similarly, on the flights of Pan American 321,870 pounds of company material was carried as against 393,277 pounds of commercial cargo and 68,000 of military cargo. It is further argued by Seaboard that even the certificated carriers recognize that the operation of all-cargo planes on schedules is not the best method of developing freight business. It is pointed out that Pan American found it advantageous to cancel or reschedule nearly 50 percent of its all-cargo flights during 1948. Some flights were cancelled and the aircraft utilized in contract flights to nonscheduled points. The freight available for such flights, theoretically at least, was placed on combination aircraft without delays. It can be concluded that the operation of aircraft by the certificated carriers, either of the all-cargo or combination type, with unused space is not the proper criteria for determining whether there is a need for another specialized air freight service.

Seaboard asserts that the freight operations of the certificated carriers have been subordinated to their passenger and mail operations and have only incidentally resulted in the transportation of freight. Seaboard alleges that a great portion of the increased freight which has been carried by these carriers is a direct result of the stimulation in the freight potential which has resulted from the better service and lower rates which had had to be instituted due to the competition of nonscheduled carriers. Seaboard points out that despite

carrying 1 million pounds of freight during the first six months of 1949, the traffic of AOA, Pan American, and TWA during this same period was approximately five times their traffic for the first six months of 1946. Seaboard concludes that the real development of the freight potential has barely begun and that only through the lowering of rates to a minimum operating level consistent with the loads that are available can the real freight potential be attained.

Seaboard contends that the volume of business it has obtained operating under the handicaps of an irregular authorization demonstrates the inadequacy of the freight service of the certificated carriers. The latter reply that Seaboard has obtained traffic by undercutting in rates, offering illegal rebates, commissions, and advantages, and otherwise operating on an illegal basis.

The record of the Investigation of Seaboard & Western Airlines, Inc., Docket No. 3346, has been stipulated into this record and contains substantial evidence that Seaboard has operated a cargo service on an illegal basis. The Board's decision in this case, dated June 5, 1950, contains the finding that Seaboard operated a regular cargo service between designated points, charged rates different from those specified in its currently effective tariffs, engaged in air transportation between points for which rates were not provided in its effective tariff, and violated other provisions of the Act and Economic Regulations. The present record shows that, in general, Seaboard's published rates were maintained below those for the certificated airlines. The record shows that, under the guise of contract operations which the Board has since found to be common carrier operations within the scope of the published tariffs, Seaboard transported property at below its tariff rates. In view of these

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factors which would appear to have been in part responsible for attracting traffic to Seaboard, the volume of traffic carried by Seaboard does not establish that the services of the certificated carriers are inadequate. Thus, the principal concern must be towards whether or not the certification of an all-cargo carrier in addition to the present authorizations would provide public benefits.

The advantages of a cargo-only operator, both as a stimulant in the experimental field and as a yardstick to determine efficiency of operations of carriers providing both passenger and cargo service, have been recognized and amply discussed by the Board in the Domestic Air Freight Case.<sup>6/</sup> Nevertheless, such advantages cannot be obtained in the absence of a sufficient potential to support another carrier. If it is determined that such potential actually exists, then and only then will it be necessary to determine whether Seaboard or Transocean, or either of them, should be authorized to provide such service.

Potential traffic. - Transocean points out that during the prewar years, there were approximately 192,000 tons of freight moved between North America and Europe with an average value of 50 cents per pound or greater. Transocean estimates that, in view of the increased freight being shipped to Europe in the postwar years, approximately 300,000 tons of goods in this value range would travel in the near future. The certificated intervenors assert that historically there was a great directional unbalance in shipments between the United States and Europe which has continued during the postwar years. This factor would make extremely difficult the obtaining of the high average load factors proposed by

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<sup>6/</sup> Docket No. 810, et al., decided July 29, 1949.

Seaboard and Transocean. In part, this directional unbalance argument has been answered by Transocean in pointing out that the present situation is primarily attributable to the necessity of replenishing the goods and industrial equipment destroyed during the war and that a substantial part of the unbalance will be eliminated as soon as the industrial machinery in Europe is functioning at a normal pace. Transocean also points out that, while historically there was a great directional unbalance in total trade between North America and Europe, the exports and imports in the high value categories between the United States and Europe were approximately balanced in the prewar years. It is thus contended that the directional unbalance will not exist when normal trade between these areas is attained insofar as those categories of freight which might utilize air transportation are concerned.

Both Seaboard and Transocean have made estimates of the potential air freight between these areas. Seaboard's estimate reflects a potential of 685,000,000 pounds per annum between the United States, Europe, and the Far East, while that of Transocean amounts to 300,000,000 between North America and Europe. These estimates were arrived at through entirely different sets of reasoning and both appear to be somewhat optimistic. Those of Seaboard contain a substantial directional unbalance of 593,000,000 pounds as against 92,000,000 pounds. Those of Transocean eliminate the unbalance on the basis of a statistical abstract prepared in 1942 by J. Parker Van Zandt. The volume of trade utilized as a basis for determining the probable amount of postwar trade to Europe in neither instance is free from the defect of utilizing years during which a state of war either existed or was imminent. Admittedly, volumes of trade in this value category have been achieved since the war approximately

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near the level which is estimated in one direction, from the United States to Europe. While it is possible that the flow of goods from the United States to Europe may be continued at a level comparable to that now in existence and that the flow of goods from Europe to the United States may be increased to balance this amount, no evidence was introduced which requires such a conclusion. It is more likely that the traffic from the United States to Europe, which is in part rehabilitary in nature, will decrease as that from Europe to the United States increases, to reach a relative balance. As pointed out in the statistical abstract prepared by Mr. Van Zandt in 1942, the total imports and exports in the high value category of more than 1 thousand dollars per ton totaled approximately 120,000 tons per year. There appears to be no justification for an assumption which will increase this total trade to 300,000 tons or more per year in the near future, even assuming that such trade reaches a state of relative balance. Furthermore, these estimates do not represent an estimate of what will actually travel by air, but merely a potential from which the air traffic may be derived.

Of prime importance in this case is the amount of air freight which may be realized through the operation of either of the applicants or through the operation of freight services at rate levels proposed by the applicants. In determining the revenue estimates, each of the applicants estimates that a certain portion of the potential air freight would move over their services at the rate level they propose and at the frequency of flight operations proposed. Seaboard utilized the services of an aviation consultant firm in obtaining an estimate of the air freight potential available between the United States and the areas to which service is proposed. Essentially, this estimate is

based on actual movements of freight during 1948 as shown by the export and import records of the Bureau of Census. Initially, in separating that portion of freight which might utilize air service at the proper rates, the criteria was to include all goods with a value of 1 dollar per pound. Nevertheless, to the total poundage having this value or more were added many commodities with a lesser value which the consultant believed or knew were air freight potential. Out of the total poundage shown by Seaboard, 728,916,000 pounds or 72.47 percent actually had a value per pound of less than 99 cents and 48.40 percent had a value of less than 49 cents per pound. Admittedly, the total figures submitted by Seaboard as potential represent more of an actual potential than the total freight transported across the Atlantic, but the inclusion of such a substantial amount with a value of less than 50 cents a pound raises serious doubts as to whether most of this traffic is actually potential. Transocean employed an outside consultant, Mr. Van Zandt, to estimate the potential air freight between the areas proposed and this estimate was again based on the value of the freight. The witness for Transocean showed that during the postwar years a substantial amount of freight was transported in excess of that prior to the war. He also utilized statistics from the Bureau of Census showing that approximately 192 million pounds of freight with a value of 50 cents per pound or more were transported between the areas under consideration immediately prior to the war.<sup>7/</sup> Utilizing a judgment factor as to the probable

<sup>7/</sup> It is assumed that the same theory for considering freight with a value of 50 cents per pound or more as potential for air transportation was utilized by this witness as in Transportation Series No. 1, United States Overseas Air Cargo Services, published by the Department of Commerce in 1949, page 112. This points out that during 1947 the charges for air freight carried across the North Atlantic represented approximately 8 percent of the average value per pound of the commodities moving in the United States foreign trade by air.

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increase in total traffic in postwar years as against the prewar years, the witness concluded that approximately 300 million pounds would be transported in both directions in a normal year.

While both Seaboard and Transocean utilized the services of outside consultants in establishing traffic potentials, the translation of these potentials into revenue estimates by both carriers was made through judgment estimates within their own organization. Seaboard estimates that by operating about six round trips per week at rates which would provide approximately 27 cents per ton mile during the first phase of the operations and 23 cents per ton mile for the second phase of operations, they would obtain on their own operation a total of 8.2 million pounds across the Atlantic. The estimate by Transocean's aviation consultant was 10 percent of the potential moving if rates were lowered to 20 cents per ton mile and 25 percent moving at 10 cents per ton mile. Transocean then estimated a reduction of the rate to 32-1/2 cents per ton mile would make available for Transocean 20 million pounds across the Atlantic. With respect to each applicant, a proper evaluation of these estimated revenues must be considered in the light of two important factors. The first is whether the amount of traffic can be carried in view of the limited frequency of service proposed and the capacity of the aircraft to be used, particularly with respect to the critical sector between Gander and Shannon, and second, assuming that the amount of freight estimated can be carried, whether the plane can be operated at the estimated costs. The inability to attain the volume of revenue freight on board either because of limitations on capacity through seasonal load factors, directional unbalance, or lack of frequency of flights, would decrease the revenues per plane mile. Similarly, the inability

to operate at the plane mile cost estimated would require greater volumes per plane mile or higher rates per ton mile.

Essentially, the volumes anticipated by either applicant can only be attained through a downward revision of the rate structure applicable to freight. Both carriers anticipate rate reductions which would bring the average revenue per ton mile approximately 25 to 30 percent below that presently attained by the certificated carriers. The question of whether the proposed rate reductions will increase the over-all traffic sufficiently to result in profitable loads is a matter of judgment. Neither Seaboard nor Transocean have furnished any statistical basis for estimating the increase in traffic which will be brought about by the reduction in rates.

It is noted that the average rate on cargo carried by United States and international and overseas carriers, as shown by the revenue per ton mile in the Form 41 reports, decreased approximately 30 percent during 1947 and that this decrease resulted in approximately 100 percent increase in the ton miles and a 94 percent increase in the tonnage carried. In 1948, at rates averaging between 11 and 12 percent lower than in 1947, the ton miles of cargo service performed by United States, international and overseas carriers increased nearly 38 percent. Thus, although no statistical basis has been forwarded by either applicant as justification for the estimated traffic to be carried, it might be reasonable to anticipate that a reduction in rates of 25 percent would result in increase in traffic of as much as 50 percent. Nevertheless, it must also be recognized that this increase in traffic must be shared by two American certificated carriers and at least five foreign scheduled carriers as well as any applicants certificated herein.

8/ It is assumed here that AOA will not be operating since the Board has approved its acquisition by Pan American.

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As pointed out previously, during the first six months of 1949 the three certificated carriers transported almost 3 million pounds of commercial freight while Scaboard carried approximately 1 million pounds. Assuming that a reduction of 25 percent in the rates would increase this tonnage by 50 percent and expanding the six months total to a yearly basis, there would be an increase of approximately 4 million pounds. Scaboard estimates that it would carry almost 3 million pounds on its aircraft operated on almost a daily basis. Obviously, to carry this much freight at rates 25 to 30 percent lower than those presently effective would require either a diversion of a substantial portion of the traffic presently carried by the certificated or foreign carriers, or an increase in excess of 100 percent. The estimated traffic which would be carried by Transocean appears to be a more reasonable estimate since it is only one-fourth that of Scaboard, but the service proposed is only one-third as great. On two weekly round trips Transocean would have to obtain cargo in amounts approximately the same as the certificated carriers are now obtaining through the operation of numerous daily round trips on combination aircraft plus approximately four weekly round trips with all-cargo aircraft. Assuming rates of approximate equality, there seems no justification for the belief that Transocean will obtain a higher portion of the traffic per flight, if it obtains as much, as the certificated carriers in view of their more frequent operations.

Expense estimates. - In addition to the problems raised by the traffic potential, substantial doubt exists as to whether either applicant can operate within its expense estimates. A number of specific defects in the cost estimates were pointed out by Pan American. Pan American contends that Transocean has allowed an insufficient number of crews to operate the estimated plane miles.

Transocean argues that the operations would result in a proper utilization of plane crews with less than 1,000 hours per year by utilizing crews scheduled for transatlantic service on DC-4's in part on the C-46 operation and rotating such crews to keep them below the allowable 1,000 hours per year. Using Transocean's calculations, 96.3 percent of the maximum hours of flying allowed by the present safety regulations per crew will be utilized. If as much as 4 percent of Transocean's flying is nonrevenue, to achieve the revenue mileage estimated will require the addition of an extra crew.

Transocean also assumes that landing fee expense would amount to \$35 per landing, although the record shows that typical landing fees are \$58 for Shannon, \$68 for London, from \$100 to \$150 at Gander, and from \$17 to \$48 at Paris, depending upon the gross weight. Utilizing Transocean's proposed schedules, it is apparent that most of the landings will be made at Shannon, London, and Gander with a very small number at other points. Thus, the estimated costs of landings would appear to be insufficient.

Pan American also alleges substantial deficiencies in Transocean's estimates for depreciation of engines and other flight equipment, for operating expenses of C-46's, and in various categories of ground and indirect expense. Pan American particularly points out that Transocean predicts a total cost of \$93,000 a year for ground operations at 19 stations, or an average cost per station of slightly more than \$400 a month. Specific deficiencies in Seaboard's expenses were also pointed out by Pan American, particularly in utilizing a fuel estimate based on an average of 16 months despite a clear indication that fuel costs were steadily going up through the entire period. Pan American points out that Seaboard utilizes an average ground and indirect expense amounting to

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37.1 cents per revenue mile despite its experience in ground and indirect expenses gradually increasing from 31.18 cents per revenue mile in September of 1948 to 49.36 cents in June of 1949. It appears quite clear from these examples that it is doubtful that either Transocean or Seaboard can actually operate the proposed service at the cost they have estimated. Therefore, each carrier will be required to obtain higher load factors or to charge higher rates in order to exist without substantial losses in the absence of a mail pay subsidy.

In addition to these specific defects, the general level of cost estimated by these carriers does not correlate with experience in the air transportation industry. For instance, Transocean estimates that it will operate an annual mileage of 627,774 statute miles, or approximately 150,000 miles per quarter, with DC-4 aircraft at an average plane mile cost for direct flying expenses of 80.04 cents per plane mile. An examination of the direct flying expenses of AOA, TWA, and the Atlantic and Pacific Divisions of Pan American reveals that none of these carriers utilizing DC-4's during the year ending March 31, 1950 were able to operate at less than a dollar per plane mile direct flying expenses. Furthermore, an examination of the DC-4 costs of Flying Tigers for six months ending March 31, 1950 shows that this carrier, operating over land and with smaller crew requirements, was only able to operate at 74.53 cents per plane mile.

Examined in greater detail, the data shows that Transocean estimates 57.5 cents per plane mile for flying operations as against 48.25 cents per plane mile of Flying Tigers. Transocean's flying operations should cost more in view of larger crew requirements for over-ocean flying. The estimate for Transocean's flying operations thus appears reasonable. Transocean, however,

estimates 14.57 cents per plane mile for direct maintenance of flight equipment as against 22.37 cents actual per plane mile costs of Flying Tigers. The direct maintenance estimate of Transocean is substantially lower than that achieved by any carrier in international or domestic air freight transportation. Transocean has stated that this maintenance figure is based on the actual history of operations by Transocean. Transocean has obtained maintenance through its subsidiary, the Aviation Maintenance Corporation, which also provides a substantial amount of maintenance for the military departments and other carriers. Without a more detailed breakdown of the allocation of costs in its maintenance performed by this subsidiary, a possibility exists that the fully allocated maintenance costs were not charged to Transocean.

Similarly, Transocean estimates that it will operate two C-46 aircraft in Europe with an annual mileage of 535,548 at approximately 74.2 cents per plane mile direct flying expense. A comparison of this estimate with costs of Pan American, Latin American Division, National, Slick, and Flying Tigers indicates that it is not substantially out of line providing adequate utilization is realized on the equipment. Transocean admits that a rather low utilization of C-46 aircraft will be achieved in its proposed operations. A comparison of the expense estimates of Seaboard and Transocean in the proposed operations with those of two of the domestic freight carriers, Slick and Flying Tigers, and the three transatlantic carriers, Pan American, AOA, and TWA, is contained in Appendix III for the year ending March 31, 1950. For purposes of comparison, the expenses per revenue ton mile and per available ton mile are set forth.

In addition to the fact that the direct maintenance cost estimates of Transocean appear low and should be increased to at least 20 cents per plane

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mile, the relationship of the ground and indirect expenses to the direct flying expenses appears seriously out of line. For example, the ground and indirect expenses of Slick represent 84 percent of its direct flying expenses, for Flying Tigers the ground and indirect expenses are 61.56 percent of direct flying expenses, and for the international carriers, after eliminating passenger service, the relationship varies from 81 percent for Pan American to 89.7 percent for TWA. Transocean estimates that its ground and indirect expenses will be only 33.6 percent of its direct flying expenses while Seaboard estimates only 34.6 percent. It is obvious that the experienced relation of ground and indirect expense of certificated carriers, including those in the air freight business without the benefit of mail pay, cannot be disregarded in the expense estimates of Transocean and Seaboard. Utilizing the lowest relationship of 61 percent which is achieved by Flying Tigers, both Transocean's and Seaboard's estimates would need to be raised by approximately 4 cents per available ton mile, an increase of 25 percent. It is obvious that a 25 percent increase in operating costs would make impossible an economic operation at the rates it proposes.

Both Seaboard and Transocean include comparatively small allowances for depreciation on the theory that the flight equipment is almost entirely depreciated. Seaboard is leasing a good portion of its equipment and may have to obtain other equipment which will be subject to depreciation. Even if no depreciation is considered, major maintenance generally increases as the equipment nears the end of useable life. Neither applicant appears to have allowed anything over experienced costs for the increased costs of an expanded sales effort or unionization of pilots. The relation of ground and indirect expenses to direct

expense is sufficiently out of line with the experienced costs of certificated cargo carriers to establish that many of these cost estimates are too low. It is concluded that the expense estimates of both carriers for the proposed services are insufficient.

Load factors. - Upon cursory examination, Transocean's estimate of a 60 percent load factor appears much more reasonable than the 80 percent estimate of Seaboard. However, the 60 percent load factor of Transocean does not present a true picture. Since Transocean's forecast does not include any estimate for nonrevenue flying, the load factor estimated on revenue flights would have to be higher than 60 percent to result in the revenue equivalent to that of a 60 percent load factor on all flights. During 1948, Transocean reported direct flying expenses for a total of 5,809,632 miles which included 946,970 nonrevenue miles, representing 16.3 percent of the total. Transocean has assumed that it would average 9,700 pounds utilizing a 16,000 pound available load per flight over the critical sector. However, no supporting data was submitted to justify this high an available load despite lower available estimates in the reports of all the major airlines using DC-4 cargo planes over similar length hops. Transocean's own exhibits reporting load factors on its equipment used on military flights in October of 1948 disclosed an available load of only 14,085 pounds. Seaboard estimated a capacity over this critical leg of 14,344 pounds in an eastbound direction after removal of equipment formerly used for passengers, which resulted in a lighter empty weight of the plane. Thus, while a 9,700 pound load represents a 60 percent load factor on a 16,000 pound capacity, it represents a 69 percent load factor on a 14,085 pound capacity. Furthermore, since as previously indicated some nonrevenue flying must be anticipated, a

further increase in load factor would be required if only 10 percent of the mileage flown is nonrevenue. This is substantially below Transocean's experienced nonrevenue flying but even this amount of nonrevenue flying would increase the required load per flight to 10,777 pounds, or a 76.50 percent load factor utilizing a 14,085 pound capacity. With these facts in mind, the adjusted load factor for Transocean to achieve its revenue estimate is not substantially lower than that estimated by Seaboard.

Since Seaboard contemplates greater flexibility in its operations through use of nonscheduled flights as opposed to those operated on a definite schedule by Transocean, a slightly higher load factor might be anticipated on Seaboard's operations. Seaboard estimates an average 90 percent load factor eastbound over the critical leg to Shannon. Assuming that as much as 10 percent of the load is destined for the United Kingdom on a flight going into Europe, the initial load must be 100 percent or the average load factor will fall below 90 percent. While capacity is increased on the portion east from United Kingdom, little local freight was estimated and thus only by terminating some flights at Shannon and warehousing until another flight passes through can this 90 percent load factor be attained. This would involve the same type of delays. In the absence of warehousing and delays, the load factors would seem unobtainable on their face. Not even in the all-cargo domestic field has any common carrier achieved such high load factors.

In view of the seasonal nature of a great portion of the freight available for transportation, the historical unbalance in trade of a great number of commodities, and the absence of any confirmation of peaks in both directions in trade activity, it does not appear probable that either carrier will achieve

the high load factors they have estimated. The inability of these carriers to achieve such loads in the past when operated on an irregular pattern with a substantial amount of their operations on a plane load charter basis is more convincing proof of their probable loads than their statements of what they will achieve in the future.

Conclusions. - In summary, it is apparent that most of the public benefits which have been alleged by the applicants can be provided by the presently certificated carriers. An enlarged reserve pool of equipment and flight personnel can be obtained along with lower rates for shippers equally well by the presently certificated carriers as by the applicants. Only the benefits of an independent yardstick to measure the efficiency of Pan American and TWA in cargo services and the experimental value of a nonsubsidized cargo-only operator are the exclusive attributes of the applicants.

On the other hand, these benefits can be attained only through the attraction of substantial volumes of freight to the services proposed by the applicants, either through the diversion of freight carried at the present rate levels by the certificated airlines or through increased penetration of surface traffic at lower rates. In either case, additional cost to the Government will ensue. The major portion of the freight carried by the certificated airlines, i.e. 80 percent, is transported on combination aircraft. These flights are operated primarily for the benefit of passengers and mail and the diversion of freight revenue from these flights will result in increased cost to be absorbed through mail rates. To the extent that freight carried on all-cargo planes operated by the presently certificated airlines is profitable, the diversion of this freight or the reduction of the revenue from this freight

by reducing freight rates will increase the cost to the Government. Only if the increase in traffic volume obtained by reduced rates is so great as to provide an increased net revenue would the reduction of rates do other than increase the Federal Treasury's burden. It has not been established that the traffic increase will be sufficient to produce such a result. Substantial cost to the Government must be outweighed by substantial benefits. Here the public benefits are not demonstrated to be great.

The applicants have pointed to the policy statements of the Board in the Domestic Air Freight Case and contend that they govern the situation in the present proceeding. Applying this policy to the facts of the present case does not require the conclusion that an international air freight operator should be certificated at this time. The international freight field differs substantially from the domestic. International commerce, since it is between nations as contrasted with domestic commerce between points in various states, is much more subject to the vagaries and whims of individuals and governments. International commerce has long been subjected to import and export controls, monetary restriction, and other limitations dictated by national interests rather than by the interests of international commerce alone. For example, while the increased volume of traffic necessary to make an air transportation operation successful at lower rates might normally flow from reductions in rates, these increases might easily be restricted by a foreign government requiring a reduction in amount of service. Further, in the international air transport field, the plans of carriers and of the Civil Aeronautics Board are to a great extent dependent upon agreements with foreign governments. In a field subjected to the number of restrictions heretofore indicated, it would seem wise to proceed with caution.

It cannot be seriously contended that air freight will not be developed without the certification of the applicants. It may only be urged that their certification might expedite the full development of air transportation with respect to cargo. No statistically satisfactory formula for judging the amount of traffic which will be developed by the proposed reduction in rates has been advanced. No one has established that the traffic potential at the present rate level has yet been fully developed. It may well be that the proposed reductions are not sufficient to increase significantly the traffic to be carried and that only by drastic reductions far beyond those proposed could mass air freight be developed. If this is true, it is apparent that the reductions in rates to develop mass air transportation of cargo must await further improvements in aircraft which would provide lower operating costs.

In any case, in the present instance we have only the unsupported judgment of the applicants that the reductions in rates will result in the asserted volumes of traffic. In view of the narrowness of the margin of their profit and loss and the infirmities of their cost estimates, it would appear that the certification of additional all-cargo carriers at the present time with present day equipment would be more likely to result in burdening the Federal Treasury along with bankrupting the new carriers. While the applicants argue that it is the concern of the stockholders of Seaboard and Transocean, and not of the Board, as to whether their operations result in financial success, the Board has pointed out previously that the success or failure of any major air operation of a commercial nature has a decided effect on the financial stability of the industry as a whole. Furthermore, the uneconomic operations of the carrier, even though

<sup>9/</sup> Waterman, New Orleans-San Juan Service, 8 C.A.B. 641, 645 (1947).

unsubsidized, will place a substantial burden on the presently certificated operations. On the basis of the present record, the Board should not take such risks. Since it does not appear that the public benefits inherent in the services proposed by Seaboard or Transocean could be attained without excessive costs, it is necessary to conclude that the public convenience and necessity do not require the services applied for.

In view of this conclusion, no worthwhile purpose would be served by discussing whether the evidence of record relating to past violations prevents finding Transocean or Seaboard fit, willing and able to provide the services and comply with the provisions of the Act. It is apparent that both carriers are physically able to provide the services. The only question is whether they are fit, in view of their past conduct. If the Board should disagree with the Examiner and conclude the services are required, it is essentially a policy matter to determine whether the violations which the Board has found in its decisions are sufficient to require a negative finding as to either applicant's fitness. No violations of different character are alleged or shown by evidence introduced herein. In general, the evidence merely establishes the continuance of the previous course of conduct. Thus, no recommendation will be made as to the fitness of the applicants.

#### RECOMMENDED DECISION

Therefore, based on the foregoing discussion and all the facts of record, it is recommended that the Board find that the public convenience and necessity do not at the present time require the certification of either Seaboard & Western or Transocean to provide air transportation of property between the United States, Europe, and the Middle East, and the applications in Docket Nos. 3041 and 3818 should be denied.